

STATE OF TENNESSEE

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Opinion No. 04-137

Extraterritorial “Spot Zoning” under Growth Plan

QUESTIONS

1. Do cities have the authority to implement “spot zoning” outside the city’s municipal boundaries but within the city’s urban growth boundary?
2. If the answer to Question 1 is yes, is the county required to give its consent?

OPINION

1. and 2. As a general matter, courts have concluded that ordinances that adopt “spot zoning,” as courts interpret that term, are invalid because they do not bear a substantial relationship to the public health, safety, morals, and general welfare and are out of harmony and in conflict with the comprehensive zoning ordinance of the particular municipality. No city, therefore, may implement spot zoning as Tennessee courts define that term, whether inside or outside its boundaries. Assuming the ordinance in question is not invalid “spot zoning,” a city may zone outside its corporate boundaries and within its urban growth boundaries with respect to territory for which it has been designated a “regional planning commission” by the Tennessee Department of Economic and Community Development, if the territory has not been zoned by the county. In that case, the county’s approval is not necessary, but if the county later adopts zoning ordinances with respect to the territory, county ordinances will supersede the city ordinances. Where a city has not been designated a regional planning commission with respect to property within its urban growth boundaries, a city may provide zoning for that area only with respect to territory that the county has not zoned and, then, only with the approval of the county commission.

ANALYSIS

This opinion concerns the authority of a city to implement “spot zoning” in land outside its corporate boundaries but within its urban growth boundaries under the county growth plan. The request does not define the term “spot zoning.” Courts have defined spot zoning as the process of singling out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of the owner of such property, and to the detriment of other owners. *Crockett v. Rutherford County*, M2000-01405-COA-R3-CV, slip op. (M.S. Tenn.Ct.App. July 25, 2002), citing *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E.2d 731 (1951), cited in *Fallin v. Knox County Board of Commissioners*, 656 S.W.2d 338 (Tenn. 1983). The law is well settled that “spot

zoning,” as properly known and understood, and “spot zoning” ordinances, as properly identified, are invalid on the general ground that they do not bear a substantial relationship to the public health, safety, morals, and general welfare and are out of harmony and in conflict with the comprehensive zoning ordinance of the particular municipality. *Fallin*, 656 S.W.2d at 343, quoting 2 Yokley, *Zoning Law and Practice*, § 13-3, 207 (4th ed. 1978). No city, therefore, may implement spot zoning as Tennessee courts define that term, whether inside or outside its boundaries. This opinion will assume the ordinance in question is not invalid “spot zoning” as defined by Tennessee courts.

This Office has addressed the effect of a growth plan on a city’s zoning authority in territory within its urban growth boundaries in Op. Tenn. Att’y Gen. 99-218 (November 4, 1999) and Op. Tenn. Att’y Gen. 99-227 (December 6, 1999). The statutes have not been materially amended since then. Briefly, the scope of this authority depends on whether the city has been designated a regional planning commission with respect to the territory in question. Once a county growth plan is adopted, a municipal planning commission designated as a regional planning commission may continue to exercise its authority over territory with respect to which it has been designated a regional planning commission outside the corporate limits but within the urban growth boundaries for that city designated in the county growth plan. The county’s approval for the zoning is not necessary. But if a county adopts zoning with respect to this area, then the city’s zoning ordinances will be automatically superseded under Tenn. Code Ann. § 13-7-306. *See* Tenn. Code Ann. § 6-58-112(a)(3) (“A county may establish separate zoning regulations within a planned growth area, for territory *within an urban growth boundary* or within a rural area.”) (emphasis added).

A city whose municipal planning commission has not been designated a regional planning commission with respect to territory outside its city limits may provide extraterritorial zoning and subdivision regulation beyond its corporate limits only with respect to property that the county has not zoned, and only with the approval of the county legislative body. *See* Tenn. Code Ann. § 6-58-106(d) (“in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body.”).

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